

and timely filed, other than those set forth on Schedule 3.8(c) subject to good faith disputes. Seller has timely paid all taxes which have become due pursuant to such returns or pursuant to any assessment received by it, and has paid in full all installments of estimated taxes due. All taxes, levies and other assessments which Seller is required by law to withhold or to collect have been duly withheld and collected, and have been paid over to the proper governmental authorities or are held by Seller for such payment.

(d) Seller's books and records are complete and accurately and fairly reflect the transactions and dispositions of Seller's assets in all material respects. Seller has consistently maintained a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization, and (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements and to maintain accountability for such assets and inventory is taken at reasonable intervals and appropriate action is taken with respect to any discrepancies.

**3.9 Absence of Certain Changes.** Since January 31, 1996, or as otherwise provided, except as expressly disclosed in this Agreement or except as set forth in Schedule 3.9, there has not been (a) any pending or threatened union organizational activity, labor dispute or grievance, strike or work stoppage affecting the Business; (b) any physical damage, destruction or loss materially affecting the Business where the affected assets have not been restored, repaired or replaced with assets of similar quality, value and utility; (c) any material contract, commitment or transaction entered into or consummated respecting the Business; (d) any sale, assignment, lease or other transfer or disposition of any of Seller's properties or assets except in the normal course of business; (e) any increase in compensation payable or to become payable to, or any bonus paid or agreed to be paid to, any employee or agent of the Business; or (f) any change in the service area of the Business or any electronic interference with the Business.

**3.10 Compliance with Laws, Permits and Other Instruments.**

(a) Except as set forth in Schedule 3.10(a), Seller is not in violation or breach of, or in default under, and Seller has not received any notice of any default or violation of: (i) any provision of its organizational documents, (ii) any provision of any law or regulation applicable to it or to which any of its assets are subject, including any law or regulation of the FCC, the FAA, the NYSCCT, the DOITT, or any other state, federal, or municipal administrative agency, (and no notice has been received of any violation or breach of law or regulation whatsoever) which would have Material Adverse Effect (iii) any order, judgment or award of any court, tribunal or state, federal, or municipal administrative or regulatory authority applicable to it or to which any of its assets are subject, or (iv) any material agreement or instrument to which it is a party or to which any of its assets is bound which would have Material Adverse Effect. Seller has obtained all permits and authorizations, including building and construction permits, necessary in connection with the operation of the Business and the installation and construction of the facilities relating to or used in connection with the Business, and all such permits and authorizations are in full force and effect.

(b) Seller has not offered or given any bribe or special favor not disclosed herein and Seller has not violated any law, rule or regulation in connection with procuring, obtaining or maintaining any rate payable by the Existing Subscribers (including, without limitation, any customer service charges or hookup or installation fees and charges).

(c) Except as set forth in Schedule 3.10(c), Seller has complied with its obligations and has not materially violated any duty or obligation under any applicable federal, state or local law, rule or regulation regarding or protecting the privacy of any past or present customers for the System's services and the personal, cable-related information regarding such customers.

**3.11 Intellectual Property.** Schedule 3.11(i) lists all material copyrights, trademarks, tradenames, service marks, Licenses, patents, permits, jingles, privileges and other similar intangible property rights and interests applied for, issued to or owned by Seller, or under which Seller is licensed or franchised, and used or useful in the conduct of the businesses and operations of the Business, all of which rights and interests are issued to or owned by Seller, or if licensed or franchised to Seller, are valid and uncontested. Seller has delivered to Buyer copies of all material documents, if any, establishing such rights, licenses or other authority. Except as set forth on Schedule 3.11(ii), to Seller's knowledge, there is no pending or threatened proceeding or litigation affecting or with respect to such intellectual property. Seller has received no notice and has no knowledge of any infringement or unlawful use of such property. The intellectual property listed in Schedule 3.11 includes all such property necessary to conduct the Business as now conducted.

**3.12 Litigation.**

(a) Except as set forth in Schedule 3.12(a), there are no material actions, suits, proceedings or investigations (whether or not purportedly on behalf of Seller) pending or threatened against or affecting Seller or the Business at law or in equity, or before or by any federal, state, municipal or other governmental department, commission, board, agency or instrumentality, domestic or foreign, including any actions, suits, proceedings or investigations filed or arising in connection with any building access agreement to which Seller or its Affiliates are a party.

(b) Except as listed in Schedule 3.12(b), Seller is not operating under or subject to, or in default with respect to, any order, writ, injunction or decree of any court or federal, state, municipal or other governmental department, commission, board, agency or instrumentality, domestic or foreign. Seller shall give Buyer written notice (promptly and not later than the Closing) if, prior to the Closing, Seller acquires any additional information or knowledge with respect to any of the matters set forth in this Section 3.12(b) or any grounds therefor.

**3.13 Employee Information.**

(a) Schedule 3.13(a)(i) contains a true and complete list of all Persons employed in connection with the Business, and identifies any and all Persons, if any,

employed at the date of this Agreement in connection with LIVE or the Transmission Services Agreement. Except as set forth on Schedule 3.13(a)(ii), there are no employment contracts, consulting agreements, independent construction agreements or other compensation arrangements respecting any Person providing services on behalf of Seller or LIVE.

(b) Seller is not a party to any collective bargaining agreement or other contract or commitment to or with any labor union or other employee representative or group of employees, and no labor organization or any representative thereof has, since Seller has owned the Business, made any attempt to organize or represent such employees. There are no unfair labor practice charges, pending grievance proceedings or adverse decisions of a Trial Examiner of the National Labor Relations Board against Seller or any agent, representative or employee of Seller. Seller is not in arrears in the payment or deposit of any wages or wage-related governmental taxes or charges. Seller has complied with all laws relating to the employment of labor, including, without limitation, the Employee Retirement Income Security Act of 1974, as amended (ERISA), and those laws relating to safety, health, wages, hours, collective bargaining, unemployment insurance, workers' compensation, equal employment opportunity and payment and withholding of taxes.

(c) Except as set forth in Schedule 3.13(c), Seller is not a party to or bound by any employee benefit plan within the meaning of Section 3(3) of ERISA, whether or not such plan is otherwise exempt from the provisions of ERISA, and no employee or spouse of an employee is entitled to any benefits that would be payable pursuant to any such plan. Except pursuant to a plan or agreement listed on Schedule 3.13(c), Seller has no fixed or contingent liability or obligation to any person now or formerly employed by Seller in connection with the Business, including, without limitation, pension or thrift plans, individual or supplemental pension or accrued compensation arrangements, contributions to hospitalization or other health or life insurance programs, incentive plans, bonus arrangements and vacation, sick leave, disability and termination arrangements or policies, including workers' compensation policies. Seller has administered any plan on Schedule 3.13(c) in accordance with the provisions of ERISA. Buyer shall not assume or hereby become obligated to pay any debt, obligation or liability arising from Seller's employee benefit plans, or any other employment arrangement, and coverage under such plans and arrangements shall remain the responsibility of Seller.

(d) All permanent full- and part-time employees employed by Seller in connection with the operation of the Business have been reported to the FCC under the applicable Employment Unit Nos. Except as disclosed in Schedule 3.13(d), such employment unit(s) are not the subject of any pending equal employment opportunity ("EEO") complaints or FCC EEO investigation. Seller has an EEO program that complies with the requirements of the Communications Act and the FCC's rules and regulations pertaining hereto. The FCC has not denied EEO certification to this(these) employment unit(s) for any consecutive three year period.

**3.14 Finder's Fee** No agent, broker or finder has acted for Seller in connection with this Agreement, and the transactions contemplated hereby, and Seller hereby agrees to indemnify and save Buyer harmless from any claims of Persons claiming by or through Seller

for commissions or fees by reason of this Agreement or the transactions contemplated by this Agreement.

**3.15 Safety and Environmental Representation.** Seller is in compliance with, in all material respects, and has not been notified of any violation of all applicable laws and regulations related to the environment, health and safety. All required governmental permits have been obtained and are in effect, and no on-site storage, treatment or disposal of hazardous waste or material has been made (except in compliance with applicable laws and regulations). There are no pending actions, proceedings, or notices of potential action against Seller or with respect to the Business, and Seller has no knowledge of any facts that may lead to actions, proceedings, or notices of potential action from any governmental agency regarding the condition of the properties owned or leased by Seller under environmental, health or safety laws, which would have a Material Adverse Effect. Seller has lawfully disposed of its waste and no pending or threatened proceedings exist concerning waste disposal by Seller. There are no underground storage tanks, PCBs, asbestos, radon gas, harmful nuclear radiation, or hazardous wastes present on the properties leased by or personal property owned by Seller. If any environmental audit (which may be commissioned by Buyer at its expense) indicates that any Purchased Assets are likely to become subject to any remediation, clean-up, or other obligation or response under any environmental law then Seller shall be responsible for paying all the costs of such remediation, clean-up, or other obligation or response, and Seller shall indemnify Buyer against any claims arising therefrom.

**3.16 Non-Foreign Status.** Seller is not a "non-resident alien", "foreign corporation", "foreign partnership", "foreign trust" or "foreign estate" within the meaning of the Internal Revenue Code of 1986, as amended, and the regulations thereunder and Seller agrees, at the Closing, to deliver to Buyer any affidavit or certificate required pursuant to the Internal Revenue Code or any regulations thereunder specifically relating to the matters represented in this Section.

**3.17 Insurance.** The Purchased Assets, the Transmission Equipment are insured against loss, damage or injury in amounts customary for businesses of comparable size in the cable television industry. Schedule 3.17 lists all insurance policies held by Seller relating to such Business, properties and employees, together with the policy limit, the type of coverage, the location of the property covered, annual premium, premium payment dates and expiration date of each of the policies. All such insurance policies are in full force and effect, and effective as of the Effective Date, Seller has modified all such insurance policies to name Buyer as an additional insured and as loss payee.

**3.18 Insolvency.** No insolvency proceedings of any character, including without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Seller or any of the Purchased Assets, are pending or, to the knowledge of Seller, threatened, and Seller has not made any assignment for the benefit of creditors or taken any action in contemplation of or which would constitute the basis for the institution of such insolvency proceedings.

### **3.19 Licenses and Systems.**

(a) Schedule 3.19(a)(i) lists all concessions, cable television franchises, franchises, private cable franchises, Licenses, Excluded Licenses, pending applications for FCC licenses, permits, operating authorizations, pole attachment agreements and other agreements and approvals from all state, federal, and municipal governmental authorities and utilities, and all easements, rights-of-way and other agreements which benefit Seller or in which Seller has an interest, necessary to own and operate the Business lawfully and in the manner in which they are now operated (collectively, the **System Instruments**). Except as described in Schedule 3.19(a)(ii), there has been no material breach or violation and there is no outstanding material breach or violation of any law, rule or regulation applicable to the Systems Instrument. Schedule 3.19(a)(i) also lists all information as to the termination and expiration of all such Systems, the geographical area covered by each franchise, cable television franchise, and private cable franchise; and the status of all applications for the grant, extension or renewal of rights relating to each of the System Instruments. All such applications are being diligently pursued.

(b) Except as set forth on Schedule 3.19(b), Seller holds all the System Instruments necessary to operate the Business and the Systems lawfully and as presently conducted. Except as described in Schedule 3.19(b), there are no outstanding judicial or administrative decisions, or state, federal or municipal laws or regulations, which require or may be reasonably interpreted to require Seller to apply for and obtain a franchise or any other form of operating authority to lawfully operate all of the Systems, cable television, private cable, and any other video distribution systems operated by Seller. Except as described in Schedule 3.19(b), each System Instruments is valid and in full force and effect, and is not subject to further approval or action on the part of any Person. Except as described in Schedule 3.19(b), there are no formal or informal complaints, Petitions to Deny, or any other form of formal or informal protests currently pending and/or outstanding against Seller concerning any of the Licenses or Excluded Licenses held by Seller and/or any applications filed by Seller for any FCC licenses or permits. Except as set forth on Schedule 3.19(b), the Systems has been, and is and will be operated in compliance with all System Instruments and applicable local, state and federal laws, rules and regulations.

(c) None of the System Instruments may be revoked unless Seller breaches the terms and conditions of any such System Instrument or is found in violation of the rules applicable thereto. Seller, the Systems and the Business are in compliance with all of the terms and conditions of all System Instruments. Except as set forth on Schedule 3.19(b), there is no legal action or governmental proceeding pending for the purpose of modifying, revoking, terminating, suspending, canceling or reforming any of the System Instruments, including, but not limited to modifying the rates charged under any pole attachment or similar agreement. Except as disclosed in Schedule(s) 3.19(c), neither Seller, the Systems nor the Business are subject to notice by a governmental authority or utility of alleged noncompliance with the terms and conditions of a System Instrument or any federal, state or municipal law affecting a System Instrument or requiring the filing of a System Instrument.

### **3.20 The Systems.**

(a) Schedule 3.20(a) lists: (i) each building to which Seller's services currently are provided, and for each such building, whether the building is owned in whole or in part, controlled in whole or in part, managed in whole or in part, or otherwise operated by Seller, specifying the nature and amount of Seller's interest if less than one hundred percent (100%) ownership; (ii) for each such building, (A) the owner of the building, (B) the management company that manages the building, (C) the number of individual dwelling units in the building, (D) the number of Persons to whom video service is provided, (E) the amount billed the prior month and the amount to be billed the following month for each building, and (F) the class of services provided (*i.e.*, bulk, retail, premium); and (iii) an accurate and complete listing and description of the current channel alignments for the Systems, including all broadcast and satellite signals and services carried, respective channel assignments, and frequencies utilized and pilot carrier frequencies of the Systems.

(b) Schedule 3.20(b)(i) lists each signal or service carried in the Systems and identifies whether such signal is carried by satellite or by off-air reception. Seller and the Systems are not subject to any federal, state or local law regulating or restricting the carriage of signals. Except as set forth on Schedule 3.20(b)(ii), Seller and, to the extent applicable, the Systems have the legal right and authority, including, without limitation, all Licenses and all authority from the FCC, the NYSCTT, the DOITT, and any other New York State and New York City regulatory commissions, required for the carriage and distribution to Customers of such stations or signals.

(c) Seller is not operating, managing or otherwise conducting any cable, private cable, SMATV, or other video distribution operations in any other location in the Service Area other than as set forth on Schedule 3.20(c)(i), or through any other person, or applying for any franchises, except as disclosed in Schedule 3.20(c)(ii). Schedule 3.20(c)(iii) identifies and describes all unfulfilled promises or commitments for capital and service improvements or enhancements, whether or not legally binding, which have been made in connection with the Purchased Assets and identifies and describes all construction and improvement programs in progress.

(d) Except as set forth on Schedule 3.20(d), Seller is duly authorized and has obtained all applicable authorizations from the FCC, to the extent required, to operate all 18 GHz private operational fixed microwave, other microwave, business radio, infrared, laser and transmit-receive earth stations used by the Systems, and has made all required registrations, if any, in respect of all TVRO earth stations used by the Systems.

(e) There are no obligations or liabilities to Customers which are material, except (i) with respect to prepayments or deposits made by Customers, and (ii) the obligation to supply services to Customers in the ordinary course of business in accordance with and pursuant to the terms of all contracts, franchises, licenses, and any other contracts or agreements between Seller, customers, and the landlords, owners or managers of buildings serviced by the Systems for the distribution of video programming to all residents or occupants of such buildings and/or individual customers.

(f) None of the cable, wires, or other active or passive facilities used in the Business or the Systems require any substantial rearrangement on utility poles, substantial rearrangement in buildings, or rehabilitation. In addition, the Systems meet all current industry technical performance standards for a system of its particular design. The Systems provide reception on all channels shown in Schedule 3.20(f) in compliance with the requirements of all applicable laws and governmental rules and regulations.

### **3.21 General Regulatory Compliance.**

(a) Seller has complied, and is in compliance with the Excluded Licenses, with all federal laws (including the Communications Act and the Copyright Act), state laws, and municipal ordinances of any municipality, city, county, or other local governmental body with authority thereover wherein the Business conducts operations, and except as specifically disclosed herein, including on Schedule 3.21(a), Seller has no knowledge or has received no notice to the contrary. Seller has duly and timely filed all cable television registrations, reports and filings that are required to be filed and provided all consumer and broadcast station notices that are required to be provided under the Communications Act and the rules and regulations of the FCC and under the laws, ordinances, and regulations of all state regulatory commissions and franchising authorities.

(b) Seller has recorded or deposited with and paid or accrued for payment to the Copyright Office the royalty and syndicated exclusivity fees, and has filed and recorded all notices, statements of account, and other documents and instruments required under the Copyright Act. Except as disclosed in Schedule 3.21(b), there is no (i) litigation, or (ii) administrative proceeding pending or threatened against Seller concerning the payment of copyright royalty fees necessary for the carriage and distribution of video programming by Seller.

(c) Seller is duly authorized under FCC and FAA rules, regulations and orders, to the extent applicable, to distribute to the subscribers of the Systems all the signals currently being carried or required by law or governmental regulations to be carried and is licensed to operate any business radio, private operational fixed microwave service system, other microwave systems, and satellite earth station antenna systems being operated by Seller, and the operation by Seller of any facility licensed or registered by the FCC or FAA used in conjunction with the operation of Seller or the Systems is in compliance with the FCC's and FAA's rules and regulations.

(d) Seller has complied with all requirements of the FCC and the FAA concerning notifications to the FAA with respect to the construction and/or alteration of the Systems' antenna structures, and "no hazard" determinations for each antenna structure have been obtained, where required.

(e) Seller: (i) is not required to monitor signal leakage, maintain applicable signal leakage logs, or conduct tests under 47 C.F.R. Sections 76.610 through 76.619; (ii) has filed with the FCC required notifications of utilization of frequencies in the 108-137 MHz and 225-400 MHz bands; and (iii) has not received any notification from the FCC, the FAA, or

any other state, federal or municipal regulatory authorities of harmful interference and/or signal leakage being caused by the operation of the Systems.

(f) The physical plant and facilities of the Systems are not subject to the FCC's rules and regulations regarding signal leakage maintenance programs (including monitoring and logging of discovered leaks).

(g) Seller has made all submissions (including, without limitation, registration statements), given all notices, and owns and makes available to the Systems' customers all equipment and facilities required under the Communications Act relevant to the conduct and operation of the Systems and the businesses thereof. All of said submissions and notices are accurate and complete in all material respects.

(h) Seller has recorded or deposited with or paid to the United States Copyright Office, all notices, statements of account, royalty fees and other documents and instruments and sums required under the Copyright Act. Any fees associated with filing the semi-annual Copyright Statement of Accounts for the period in which the Closing Date occurs shall be prorated to the Closing Date. Seller is not liable to any person or entity for, and the Systems are not in whole or in part subject to or encumbered by any copyright infringement under the Copyright Act or otherwise as a result of business operations conducted by Seller and there are no violations of the rights of any legal or beneficial copyright owner (whether common law or statutory) for or by reason of any secondary or other transmission by or through the Systems or any of the Purchased Assets or Excluded Assets except as disclosed in Schedule 3.12(a).

(i) The carriage and transmission of the signals, stations and frequencies set forth in Schedule 3.21(i) has not and will not subject the Systems or Buyer to any penalties, suits or actions.

(j) All records pertaining to tests of the Systems conducted by Seller, all of which have been retained for the past three years, accurately and completely reflect in all material respects the results of such tests, and true and complete copies thereof have been delivered by Seller to Buyer.

**3.22 Rate Regulation.** Neither Seller nor the Systems are subject to governmental rate regulation. Except as shown on Schedule 3.22, the rates charged to Seller's subscribers were duly adopted, passed, and/or approved by the action(s) or inaction(s) of appropriate governmental authorities, agencies, or bodies, and the rates being charged by the Seller are in the normal and usual ordinary course of the Systems' operations and are not in violation of any applicable agreements issued with respect to the Systems and comply with all other applicable contracts, tariffs, licenses, and laws and regulations of any federal, state, county, city, municipal, or other governmental entity pertaining to the Systems and the business and operations thereof, including but not limited to compliance with the Communications Act and the applicable cable television rate regulation rules and policies of the FCC.



### **3.23 Existing Subscribers.**

(a) Attached as Schedule 3.23(a)(i) is a true and correct list of all Existing Subscribers and such Schedule indicates whether such Subscribers are "installed" or "uninstalled" as of the date of this Agreement. Seller provides (or, in the case of "uninstalled" Subscribers, will provide) cable television services to each of the Existing Subscribers pursuant to valid and binding agreements, and, except as set forth on Schedule 3.23(a)(ii), none of the Existing Subscribers is in default of any of its obligations, including payment of any subscription fees, to Seller, and except as set forth on Schedule 3.23(a)(iii), no Existing Subscriber has notified Seller of any default by Seller with respect to the provision of cable services to such Existing Subscribers.

(b) No other rates, agreements, waivers, concessions, rebates, offsets, abatements or other arrangements are in effect with respect to any Existing Subscribers as of the date hereof, except as specifically set forth on Schedule 3.23(b).

### **3.24 Programming.**

(a) Except as set forth in Schedule 3.24(a), Seller has no affiliation with, equity interest in, profit participation in, contractual right to acquire any such interest or participation, or any other relationship with any Person that provides programming (**Programmer**). Each agreement or relationship listed or described on Schedule 3.24(a) was entered into on an arms' length basis. The policies and practices of all Programmers identified on Schedule 3.24(a) are in compliance with the program access requirements of the Communications Act and the rules and regulations of the FCC pertaining thereto.

(b) For each broadcast, satellite, or other video signal or service listed on Schedule 3.24(b) as being carried by the Systems as of the Closing Date, Seller has the legal right and authority to carry such signal, and all programming agreements and other contractual agreements with the owner and/or distributor of such signals necessary for the carriage of such signals on the Systems and the distribution of such signals by Seller to its Customers (hereafter the **Programming Agreements**) have been duly signed and executed by all parties and are in full force and effect.

(c) Seller is in compliance with, and has not received any notice of any default under, any and all documents, bylaws, rules and regulations relating to the NCTC Master Agreement or any agreements executed in connection therewith.

**3.25 Inventory.** Seller has, and at the Closing Date will have, an inventory of spare parts and other materials relating to the Business as set forth on Schedule 3.25.

**3.26 Securities Laws.** Seller is not now and has never been subject to the reporting requirements of the Securities and Exchange Commission ("SEC").

**3.27 Contracts.** Except for the agreements set forth on Schedules 1.1(a), 3.24(b) and Schedule 3.27, true and complete copies of which have been furnished to Buyer as of the

date hereof, Seller is not a party to any (i) contracts for the future purchase of materials, supplies, equipment or services; (ii) programming agreements; (iii) contracts not made in the ordinary and usual course of business; (iv) employment or consulting contracts; (v) contracts with any labor union or other labor organization; (vi) guarantees or accommodations; (vii) tower site leases; (viii) equipment leases; (ix) agreements with landlords, owners, or managers of buildings served by the Systems; (x) leases of personal or real property; (xi) contracts or agreements with affiliates or shareholders of Seller, or (xii) contracts which are not terminable on no more than thirty (30) days' prior notice without penalty or fee. Except as provided in Schedule 3.27, Seller has performed all obligations required to be performed by it to date and has not breached and is not in default under any agreement listed in Schedule 3.27 or to which it is a party or by which it is bound, and all of the same are enforceable in accordance with their terms. All such agreements are in full force and effect and there does not exist any material default or event or condition which, after notice or lapse of time or both, would constitute a default thereunder by Seller or to the knowledge of Seller, by any other party thereto.

**3.28 No Other Commitment to Sell.** None of the Purchased Assets or Excluded Assets are directly or indirectly in any manner subject to any written or oral commitment, in whole or in part, for sale, transfer, assignment or disposition, other than the sale of the Purchased Assets and Excluded Assets as contemplated by this Agreement.

**3.29 No Approvals.** Except as otherwise provided herein, no authorization or approval of, or filing with, any Person will be required by Seller in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated by this Agreement.

**3.30 Bulk Sales and Transfer Taxes.** Neither the sale and transfer of any of the Purchased Assets (or Excluded Licenses or Transmission Equipment as provided herein), nor Buyer's possession and use of any thereof from and after the Closing because of such sale and transfer, will result in or be subject to (a) any law pertaining to bulk sales or transfers which makes such sales or transfers ineffective as to any creditors (or if subject to any such law, Seller shall fully comply therewith at or prior to the Closing, or (b) the imposition of any liability upon Buyer for appraisal rights or any other liability owing to any person or entity which owns any stock of or equity interest in Seller or any creditor of Seller.

**3.31 Landmark and Construction Permits Issues.** To the best of the Seller's knowledge, Seller is in compliance with all local zoning and landmarks requirements and has obtained all necessary construction permits in connection with the operation of the Business.

**3.32 Disclosure by Seller.** No representation or warranty made by Seller in this Agreement or any Exhibit or Schedule furnished or to be furnished in connection with the transactions herein contemplated contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation or warranty or any such statement not misleading.

**3.33 Roof Rights.** Seller has the legal and valid right to use and locate equipment upon the roof of each building in which Seller currently conducts business or currently has equipment, and either (a) has the right to assign all such rights to Buyer in connection with the transaction contemplated by this Agreement, or (b) where Seller does not have the right to assign such roof rights, Seller shall obtain such rights within ninety (90) days from the date hereof.

**3.34 Building Access.** On the date hereof, Seller has delivered to Buyer executed building access agreement with respect to: (i) [REDACTED]

[REDACTED] The party executing each of the agreements described in clause (i) above is duly authorized to execute and deliver such agreements and such agreements are the legal, valid and binding obligations of the parties to such agreements. To the best of Seller's knowledge, the party executing each of the agreements described in clause (ii) above is duly authorized to execute such agreements, and such agreements are the legal, valid and binding obligations of the parties thereto, provided that, in the event that any challenge (a "Challenge") shall be made to the authority of the party executing the agreements with respect to [REDACTED]

[REDACTED] Seller hereby covenants and agrees to cause such agreements to be executed by a duly authorized party within thirty (30) days of such Challenge. Following a Challenge, payments of Services Fees under the Transmission Services Agreement shall be excused until the agreements with respect to which such Challenge was made have been executed by a duly authorized party.

#### **Section 4. Representations and Warranties of Buyer.**

In order to induce Seller to enter into this Agreement, Buyer represents and warrants to Seller that the following statements are true, correct and complete. The representations and warranties of Buyer set forth in this Agreement and in any other Acquisition Document are continuing in nature and Buyer shall promptly inform Seller of any matter which would cause any such representations or warranties to be untrue, incorrect or incomplete.

**4.1 Organization, Ownership, etc., of Buyer.** Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware with full corporate power and authority to own and operate the Purchased Assets.

**4.2 Authority of Buyer.** Buyer has the full corporate power to execute, deliver, and perform this Agreement and the other Acquisition Documents. Buyer has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Acquisition Documents.

**4.3 Binding Effect.** This Agreement and the other Acquisition Documents constitute, or, when executed by Buyer, will constitute, the legal, valid, and binding obligations of Buyer enforceable against it in accordance with the respective terms hereof and thereof, subject to bankruptcy, insolvency, and similar laws of general application affecting creditors' rights and remedies.

**4.4 No Violation.** Neither the execution and delivery by Buyer of this Agreement or any other Acquisition Document nor the consummation of the transactions contemplated hereby or thereby violate or will violate any provision of law applicable to, or any provision of the articles of incorporation or bylaws of Buyer or conflict with or result in any breach of any term, condition or provision of, or constitute (with due notice or lapse of time or both) a default under, or result in the creation or imposition of any Lien upon any of the properties or assets of Buyer pursuant to the terms of, any mortgage, deed of trust or other agreement or instrument to which Buyer is a party or by which or to which Buyer or any of its assets are subject or bound.

**4.5 Finder's Fee.** No agent, broker or finder has acted for Buyer in connection with this Agreement, and the transactions contemplated hereby, and Buyer hereby agrees to indemnify and save Seller harmless from any claims of Persons claiming by or through Buyer for commissions or fees by reason of this Agreement or the transactions contemplated by this Agreement.

**4.6 Consents.** No consent or approval by, or filing with, any governmental authority is required in connection with the execution or delivery of this Agreement by Buyer or the performance of its obligations hereunder.

## **Section 5. Covenants of Seller.**

Seller agrees that from the date hereof:

**5.1 Approvals.** Seller shall promptly following the execution of this Agreement commence to obtain all consents and approvals necessary for the transfer of the Purchased Assets to Buyer and thereafter use its commercially reasonable efforts to obtain such consents and approvals as promptly and expeditiously as possible.

**5.2 Confidentiality.** Seller agrees to maintain the confidentiality of the terms of this transaction and of all information, documents, data, and records obtained in connection with this transaction.

**5.3 Conduct of Business.** Unless performance of the following obligations is waived by Buyer (in its sole discretion) in advance and in writing, in each instance, through and until the Closing, Seller shall (a) not sell or dispose of any of the Purchased Assets or the Excluded Assets, other than in the ordinary course of business, in which case such Purchased Assets and the Excluded Assets disposed of shall be replaced by assets of like kind and utility; (b) not modify, amend, alter or terminate any of the Assumed Contracts, or waive any default or breach under any of the Assumed Contracts except in the ordinary course of Seller's business (and Seller shall notify Buyer of any such modification, amendment, alteration or termination and such modifications, amendments, alterations and terminations

shall not have a Material Adverse Effect); (c) maintain the insurance set forth in Schedule 3.17; (d) maintain its books and records in accordance with prior practice, maintain all of its property and assets in good operating condition, ordinary wear and tear excepted, maintain supplies of technical materials, supplies, inventory and spare parts consistent with sound industry standards, and otherwise use its reasonable efforts to operate the Business and the Systems in the ordinary course in accordance with sound industry standards; (e) not increase the compensation payable or to become payable to, and not pay or agree to pay any bonus to, any employee or agent of Seller except in accordance with plans or policies set forth on Schedules 3.13(a), (c) and (d); (f) not enter into any contract or renewal of any existing contract for the employment of any employee of Seller other than contracts which may be terminated by the employer without penalty on not more than 30 days notice; (g) not, without the prior written consent of Buyer, enter into any other contract or commitment affecting the Business; (h) use its commercially reasonable efforts to keep its business organization intact, pursue the goodwill of its customers, make available the services of key employees, and maintain good relationships with its employees, suppliers, advertisers and other having business relations with it; (i) use its commercially reasonable efforts to obtain prior to the Closing Date consents from all third parties under the Assumed Contracts listed on Schedule 1.1(a) hereto; (j) operate the Business in all material respects in accordance with the Licenses and the Excluded Licenses, comply in all material respects with all laws, rules and regulations applicable to it, including the regulations of the FCC and use its commercially reasonable efforts to cure any material violations of the Licenses and the Excluded Licenses; (k) within fifteen (15) days after the end of each month (commencing with the month in which this Agreement is executed), furnish to Buyer a statement of operations in respect of the Business for the elapsed portion of the then current fiscal year of Seller, which financial statements shall be prepared in accordance with GAAP, except for required disclosures necessary under GAAP, consistently applied and shall fairly present the results of such operations of Seller as of the dates and for the periods covered thereby; (l) provide to Buyer, concurrently with filing thereof, copies of all reports to and other filings with the FCC; (m) not surrender or voluntarily modify any of the Licenses or the Excluded Licenses, or take any action which would cause the suspension, revocation or limitation of rights under any of the Licenses and the Excluded Licenses; (n) provide to Buyer, promptly upon receipt thereof by Seller, a copy of (i) any notice from the FCC of the revocation, suspension, or limitation of the rights under, or of any proceeding for the revocation, suspension, or limitation of the rights under any License or Excluded License, and (ii) copies of all protests, complaints, challenges or other documents filed with the FCC by third parties concerning the Business and, promptly upon the filing or making thereof, copies of Seller's responses to such filings; (o) notify Buyer in writing immediately upon learning of the institution or threat of any action against Seller in any court, or any action against Seller before the FCC or any other governmental agency, and notify Buyer in writing promptly upon receipt of any administrative or court order relating to the Business; (p) timely make all submissions and give all notices (and pay all fees (royalty and otherwise), assessments and costs) for or required to be given to governmental authorities during such period; and (q) pay all expenses in the ordinary course of business and shall, on or before the Closing Date, fully discharge and satisfy all secured indebtedness and obligations with respect to which any of the Purchased Assets or Excluded Assets are encumbered or otherwise subject.

**5.4 HSR Approvals.** Seller shall, within a reasonable period of time not to exceed five (5) Business Days after the date hereof, cooperate with Buyer in an effort to make all filings required under the HSR Act.

**5.5 Building Agreements.** Seller shall use its commercially reasonable efforts to modify and obtain all applicable agreements necessary to permit Buyer to offer voice and data communications services to Seller's Customers and other occupants and tenants in the building in which such Customers are located, for a cost, fee or commission not to exceed the prevailing market rate for such services, which rate shall be determined by Buyer in the exercise of Buyer's reasonable discretion.

**5.6 Valid Permits.** Seller shall use its commercially reasonable efforts to assist Buyer in obtaining Valid Permits.

**5.7 Intentionally Reserved.**

**5.8 Licenses.** Subject to the Transmission Services Agreement, at Seller's expense, Seller shall maintain the Excluded Licenses in good standing at all times and shall take all such actions necessary to maintain and preserve such Excluded Licenses, including diligently pursuing and/or defending any and all litigation and other proceedings which may affect such Excluded Licenses or Seller's rights thereunder.

**5.9 Litigation Status.** Seller shall keep Buyer informed as to the status of all litigation affecting Seller, the Purchased Assets or the Excluded Assets subject to the transactions contemplated by this Agreement, including, without limitation, any contemplated antitrust claims. Seller shall comply with Buyer's requests to dismiss or withdraw any litigation or proceeding other than the Antitrust Claims which Buyer deems to be harmful or not to be of significant value to Buyer's business, and Seller shall not settle, dismiss, compromise or take any other action material to any such litigation or proceeding without the prior written consent of Buyer. In addition, from and after the date hereof Seller shall diligently and actively pursue, at its sole expense, any and all litigation and other proceedings which affect the Excluded Licenses, the Transmission Equipment or the Business with respect to any and all matters relating to or arising with respect to the period prior to the Closing Date. Attached as Schedule 5.9 is a complete and accurate schedule of all litigation and regulatory proceedings, pending or threatened, by, against, or otherwise affecting, Seller or its Affiliates.

**5.10 Building Services.** With respect to any Seller Controlled Building or any other building owned or controlled by Affiliates of Seller, Seller shall use its commercially reasonable efforts to cause the building manager and the owner of such building to use support and promote the services provided by Buyer in such building.

**5.11 Acquisition Documents.** From and after Closing, Seller shall perform, or cause to be performed all of its obligations under the Acquisition Documents, including but not limited to its obligations under the Transmission Services Agreement and the LIVE Agreement.

**5.12 Systems Drawings.** To the extent available, Seller shall deliver to Buyer at or prior to Closing all "as built" and other drawings and plans of the Systems, which drawings shall be updated to reflect the current status of installation.

**5.13 Building Access Agreements with Respect to Seller Controlled Buildings.** Seller shall perform the obligations set forth on Exhibit B(1) and in Section 3.34.

**5.14 Survival of Covenants.** The obligations of Seller under Sections 5.2, 5.5, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11 and 5.13 of this Agreement shall expressly survive Closing and shall continue to be enforceable by Buyer after Closing.

## **Section 6. Covenants of Buyer.**

Buyer agrees that:

**6.1 HSR Approvals.** Buyer shall, within a reasonable period of time not to exceed five (5) Business Days after the date hereof, cooperate with Seller in an effort to make all filings required under the HSR Act.

**6.2 Application for Licenses.** Within 365 days from the Closing Date (which date shall be extended in the event that the FCC shall be closed on the date such filing shall be required), Buyer shall file its application for approval or transfer, at Buyer's option, of an appropriate license or licenses to provide cable service to the Existing Subscribers, to the extent a license shall then be required for any Existing Subscribers which have not become Eligible Subscribers. If Buyer fails to file with the FCC such application for approval or transfer of such licenses with respect to any Existing Subscribers which have not become Eligible Subscribers within such 365 day period, Buyer shall pay Seller the Holdback (less any portion of the Holdback previously paid to Seller hereunder). For purposes of this Section, if Buyer delivers such application to the FCC, Buyer shall be deemed to have "filed" for approval or transfer, even if the FCC fails to accept or rejects such filing.

**6.3 Programming Rights.** After the Closing and continuing until the LIVE Agreement is terminated or expires, Buyer shall permit Seller to use any programming rights arising under the Programming Agreements transferred to Buyer hereunder. If Buyer is unable to permit Seller to use any such transferred programming rights, Seller may request that Buyer reassign to Seller those specific programming rights which Buyer is unable to permit Seller to use. Within ninety (90) days of Seller's request, Buyer shall reassign to Seller the programming rights identified in Seller's request which Buyer is unable to permit Seller to use.

**6.4 Confidentiality.** Buyer agrees to maintain the confidentiality of the terms of this transaction and of all information, documents, data and records obtained in connection with this transaction.

**Section 7. Conditions to Closing.**

**7.1 Mutual Conditions.**

(a) Seller and Buyer shall have complied with all requirements under the HSR Act and the rules promulgated thereunder, including, without limitation, the expiration of all necessary filing and waiting requirements, and the absence of any objection by the United States Department of Justice or the Federal Trade Commission to the transactions described in this Agreement.

**7.2 Conditions to Obligations of Buyer.** The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment (or waiver by Buyer), on or prior to the Closing Date, of each of the following conditions:

(a) Seller shall not have committed willful misconduct or gross negligence in connection with the performance of any of its agreements, covenants and conditions contained in this Agreement and the other Acquisition Documents required to be performed or complied with by it prior to or at the Closing Date;

(b) Seller shall have delivered to Buyer an opinion of Seller's FCC regulatory counsel (Wiley, Rein & Fielding) substantially in the form attached as Exhibit P hereto confirming that the Transmission Services Agreement and the services to be performed by Seller thereunder are permitted under all applicable laws, rules and regulations, which opinion must be in form and substance satisfactory to Buyer; and

(c) No action or proceeding shall have been instituted before any court or governmental department, agency or commission which has the effect of restraining or prohibiting the consummation of the transactions contemplated hereby.

**7.3 Non-Performance.** Buyer shall have the right to terminate this Agreement at any time prior to Closing in the event that any of the conditions set forth in Section 7.1 or 7.2 have not been satisfied or fulfilled within one hundred eighty (180) days following the Effective Date except that, with respect to a failure to satisfy the condition set forth in Section 7.2(c), the one-hundred eighty (180) day period shall be tolled during the period that such condition is not satisfied. Nothing herein shall be construed as relieving Seller from liability for damages to Buyer for breach of its obligations under or by reason of this Agreement, and this right to terminate shall be in addition to any of the remedies Buyer may have at law or in equity. In lieu of terminating this Agreement and in addition to any other remedies Buyer may have at law or in equity, Buyer may sue for specific performance and damages.



## **Section 8. Indemnification.**

### **8.1 Right to Indemnification.**

(a) Seller shall indemnify, reimburse, and hold harmless Buyer from and against all claims, losses, damages, costs (including, without limitations, court costs and attorneys' fees), expenses and liabilities suffered, incurred, or sustained by Buyer on account of (i) any misrepresentation, breach of warranty, or nonfulfillment of any agreement on the part of Seller under this Agreement or under any Acquisition Document, (ii) the failure of Seller to pay and perform promptly when due all of its obligations, liabilities and debts, (iii) the operation of the Business prior to the Closing, (iv) any breach by Seller of any of the Assumed Contracts prior to Closing, (v) the Antitrust Claims, (vi) losses by Buyer arising during the period from and after the Effective Date to but not including the Closing Date arising from Seller's failure to maintain insurance of the type described in the first sentence of Section 3.17 and (vii) any other matter or event respecting Seller and which occurs with respect to the period prior to the Closing including, without limitation, losses arising from litigation disclosed on Schedule 3.12(a) (other than liabilities specifically assumed by Buyer under the Assumed Contracts). In order to ensure the ability of Seller to perform its obligations under this Section, the obligations of Seller under this Section 8.1 shall be personally guaranteed by Howard P. Milstein and Edward L. Milstein, jointly and severally (the **Guarantors**), pursuant to a written guaranty in the form attached as Exhibit Q, provided that the Guarantors shall not be required to pay to Buyer any amount in excess of [REDACTED] in the aggregate pursuant to such guaranty.

(b) Buyer shall indemnify, reimburse, and hold harmless Seller from and against all claims, losses, damages, costs (including, without limitation, court costs and attorneys' fees), expenses and liabilities suffered, incurred, or sustained by Seller on account of (i) any misrepresentation, breach of warranty, or nonfulfillment of any agreement on the part of Buyer under this Agreement or under any Acquisition Document, including, without limitation, Buyer's agreement to assume liabilities under the Assumed Contracts in accordance with this Agreement, (ii) the failure of Buyer to pay and perform promptly when due all of its obligations, liabilities, and debts as provided under this Agreement, (iii) the operation of the Business first arising with respect to the period after the Closing, (iv) any claims by Affiliates of Buyer for breaches of agreements with such affiliates and (v) any breach or default after the Closing Date by Buyer under any of the Assumed Contracts; provided, however, that Seller shall not be entitled to indemnification hereunder with respect to matters arising under contracts, commitments or agreements of Seller not assumed by Buyer hereunder or with respect to any matter caused directly or indirectly to any act or omission of Seller or any of its affiliates.

**8.2 Right to Contest.** Before being required to make any payment pursuant to Section 8.1 hereof, Seller or Buyer, whichever is the indemnifying party (the **Indemnifying Party**), may, at its expense, elect to undertake and control the defense of, and take all necessary steps properly to contest any, claim, liability or action in respect thereof involving third parties or to prosecute such contest or action to conclusion or settlement reasonably satisfactory to the party to be indemnified (the **Indemnified Party**). The Indemnified Party

shall notify the Indemnifying Party in writing of any claims to indemnification involving third parties it may wish to assert pursuant to Section 8.1 hereof as soon as reasonably practicable; thereafter, the Indemnified Party shall, at the expense of the Indemnifying Party, cooperate fully with the Indemnifying Party in the conduct of any such contest or action. If the Indemnifying Party makes the foregoing election, then the Indemnified Party shall have the right to participate, at its own expense, in all proceedings. If the Indemnifying Party does not make such election, it shall be bound by whatever result is obtained by the Indemnified Party respecting such third party matter.

**8.3 Limitation of Claims.** Any claim by a party hereunder arising from a claimed breach by the other party of any representation, warranty or covenant hereunder (other than tax claims in respect of which there shall be no limitation period and covenants which expressly survive Closing) shall be made in writing and delivered to such other party no later than the first anniversary of the Closing Date. Notwithstanding the foregoing, there shall be no limitation on the period within which any claim may be brought under this Section 8.3 with respect to any litigation or proceeding pending or threatened against Seller or with respect to the Business prior to Closing, and Seller shall remain solely responsible for and shall indemnify Buyer against any and all such matters.

## **Section 9. Access; Representations to Survive Closing.**

**9.1 Notice of Breach.** Buyer and Seller each agrees to give to the other prompt written notice of a breach by such other party of any of its representations, warranties and covenants of which Buyer or Seller, as the case may be, obtains actual knowledge prior to the Closing Date. The term "actual knowledge" shall be deemed to include information which is actually known and in good faith recognized to be such a breach, it being the intention hereby that a party be afforded as much opportunity as reasonably possible to cure, prior to Closing, breaches which hereafter are found to exist.

**9.2 Survival.** All representations and warranties contained in this Agreement, including the Schedules hereto, and in any other instruments which may be delivered pursuant hereto or in connection with the transactions contemplated hereby, shall survive the Closing and the consummation of the transactions contemplated by this Agreement for one (1) year after the Closing Date (except those with respect to taxes which shall survive for the applicable statute of limitations period and covenants which expressly survive Closing); and no inquiry or investigation conducted by either party shall impair or otherwise affect its right to rely upon, or exercise any remedy in respect of, the representations and warranties made herein. Notwithstanding the foregoing, there shall be no limitation on the duration of any representation or warranty contained in this Agreement with respect to any litigation or proceeding pending or threatened against Seller or with respect to the Business prior to Closing, and Seller shall remain solely responsible for and shall indemnify Buyer against any and all such matters.

**Section 10. Miscellaneous.**

**10.1 Fees and Expenses.**

(a) Unless otherwise provided in this Agreement, all costs of transferring the Purchased Assets in accordance with this Agreement, and all recordation, transfer and documentary taxes and fees, and filing fees shall be paid equally by Seller and Buyer, except that all fees incurred in connection with any filings required under the HSR Act shall be paid by Buyer.

(b) Except as provided in Section 10.1(a), each of the parties shall bear its own expenses in connection with the negotiation and the consummation of the transactions contemplated by this Agreement.

**10.2 Governing Law.** This Agreement and the Acquisition Documents shall be construed under and governed by the laws of the State of New York (unless otherwise provided in such Acquisition Documents).

**10.3 Notice** All notices, demands or requests required or permitted hereunder shall be in writing and shall be deemed duly delivered and received on the date of personal delivery (which shall include delivery by telecopier, with confirmation, or by Express Mail, Federal Express or other recognized overnight courier service that issues a receipt or other confirmation of delivery) to the party for whom such communication is intended, or three (3) Business Days after the date mailed by certified mail, return-receipt requested, postage prepaid, addressed as follows, or to such other address as a party may request by giving notice in the manner provided in this Section:

If to Buyer, to:           c/o RCN Corporation  
                                  105 Carnegie Center  
                                  Princeton, NJ 08540  
                                  Attention: David C. McCourt  
                                  Telecopy No.: (609) 734-3808

With copies (which shall not constitute notice) to:

c/o RCN Corporation  
Legal Department  
105 Carnegie Center  
Princeton, NJ 08540  
Attention: General Counsel  
Telecopy No.: (609) 734-3830

and to:

Swidler & Berlin, Chartered  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
Attention: Andrew D. Lipman, Esquire  
David M. Martin, Esquire  
Telecopy No.: (202) 424-7645

If to Seller, to:

575 Madison Avenue  
New York, New York 10022  
Attention: Howard P. Milstein  
Telecopy No.: (212) 891-7224

With a copy (which shall not constitute notice) to:

Simpson Thacher & Bartlett  
425 Lexington Avenue  
New York, New York 10017  
Attention: Philip T. Ruegger  
Telecopy No.: (212) 455-2502

**10.4 Risk of Loss.** The risk of loss by force majeure or for any other reason to the business or property of Seller between the date of this Agreement and the Closing Date shall be on Buyer, solely to the extent Closing occurs hereunder. Seller shall promptly pay to Buyer, and hereby assigns, any and all insurance proceeds received by Seller in connection with any such loss, and all such proceeds received by Seller shall be deemed to be held in trust by Seller for the benefit of Buyer, pending delivery to Buyer. In the event of any such loss, Seller will cooperate in good faith to file and pursue claims under Seller's insurance policies that cover such loss.

**10.5 Construction.**

(a) The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

(b) Words such as "herein" and "hereof" shall be deemed to refer to this Agreement as a whole and not to any particular provision of this Agreement.

(c) This Agreement has been negotiated and prepared by Buyer and Seller, and if any provision of this Agreement requires judicial interpretation, the court interpreting or construing the provision shall not apply the rule of construction that a document is to be construed more strictly against the party who prepared the document.

**10.6 Assignment; Binding Effect.** Neither Buyer nor Seller shall assign this Agreement prior to the Closing without the prior written consent of the other party. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their successors and assigns.

**10.7 Amendment; Waiver.** This Agreement may be amended only by a written instrument signed by Buyer and Seller. No provisions of this Agreement may be waived except by an instrument in writing signed by the party sought to be bound. No failure or delay by any party in exercising any right or remedy hereunder shall operate as a waiver thereof, and a waiver of a particular right or remedy on one occasion shall not be deemed a waiver of any other right or remedy or a waiver on any subsequent occasion.

**10.8 Entire Agreement.** This Agreement sets forth the entire understanding between the parties relating to the subject matter hereof, any and all prior correspondence, conversations and memoranda or other writings being merged herein and replaced. No promises, covenants or representations of any character or nature other than those expressly stated herein have been made to induce either party to enter into this Agreement. Neither this Agreement nor any part hereof, including this provision against oral modifications, may be modified, waived or discharged except by a writing duly signed by the party sought to be bound.

**10.9 Initial Notice to Public.** Seller and Buyer shall mutually agree in advance on the manner in which the public is first informed of the execution of this Agreement. No publicity shall be given by Seller with respect to this Agreement or the transactions contemplated hereby until Buyer shall have approved the timing and content thereof, unless disclosure by Seller is required by applicable law, rule or regulation. In such latter event, Seller shall use its best efforts to inform Buyer of the timing and content of such publicity prior to announcement.

**10.10 Confidentiality.** Unless otherwise agreed to by the parties, each party agrees to maintain the confidentiality of all information, documents, data and records belonging to or obtained from or through the other party, in connection with this Agreement.

**10.11 Further Assurances.** From and after the date hereof, Seller shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, documents, instruments, transfers, conveyances, discharges, releases, assurances and consents as Buyer may, from time to time, reasonably request to confirm, perfect and evidence the transfers and transactions contemplated by this Agreement.

**10.12 Severability.** In the event that one or more of the provisions of this Agreement shall be held to be illegal, invalid or unenforceable, such provisions shall be deemed severable and the remaining provisions of this Agreement shall continue in full force and effect.

10.13 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one agreement.

10.14 **Exclusivity.** In consideration of Buyer's undertaking the substantial legal, accounting and other expenses related to this Agreement, Seller hereby agrees that it will, and will cause each of its subsidiaries, and all of their respective directors, officers, employees, representatives and agents to immediately cease and cause to be terminated any existing activities, discussions or negotiations with any parties conducted heretofore with respect to any merger, sale of assets or material interest or other business combination involving Seller (an Acquisition Transaction) until the earlier of Closing or the termination of this Agreement. In addition, Seller hereby agrees that during such period, Seller shall not, and shall not permit any of its subsidiaries to, directly or indirectly (a) encourage, solicit or initiate discussions or negotiations with, any person other than Buyer or its Affiliates, concerning an Acquisition Transaction, or (b) otherwise solicit, initiate or encourage inquiries or the submission of any proposal contemplating an Acquisition Transaction. Seller agrees that it shall promptly notify Buyer orally and in writing of any such inquiries or proposals.

In witness whereof, Seller and Buyer have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

**Seller:**

LIBERTY CABLE COMPANY, INC.

LIBERTY CABLE TELEVISION, INC.

LIBERTY CABLE NEWPORT, INC.

BIRDSONG COMMUNICATIONS INC.

BATTERY PLACE CABLE CORP.

LIBERTY INTERACTIVE VIDEO  
ENTERPRISES, INC.

By: 

Name: Edward L. Milstein

Title: Vice President and Secretary for  
each of the above-named entities

**Buyer:**

FREEDOM NEW YORK, L.L.C.

By: 

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*Exhibit K to Asset  
Purchase Agreement  
REDACTED*

February 20, 1996

Re: LVE, L.L.C. ("LIVE")

RCN Corporation  
105 Carnegie Center  
Princeton, New Jersey

Ladies and Gentlemen:

We refer to the Asset Purchase Agreement (the "Purchase Agreement") dated as of February 20, 1996 between Freedom, L.L.C. ("Buyer") and Liberty Cable Company, Inc. et al. (collectively, "Seller") and the documents ((together with the Purchase Agreement, the "Transaction Documents") and transactions contemplated thereby. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Transaction Documents.

The Transaction Documents contemplate that on the Closing Date, Liberty Interactive Video Enterprises, Inc. ("Existing LIVE") and RCN will enter into an operating agreement governing the ownership and management of LIVE (the "LIVE Operating Agreement"). We intend that the LIVE Operating Agreement memorialize RCN's twenty percent equity interest in LIVE. In addition, we intend that the LIVE Operating Agreement afford RCN substantially the same terms and conditions as the form of operating agreement of Freedom New York, L.L.C. attached as an exhibit to the



Purchase Agreement affords Milstein Member, (as defined therein) with the following modifications and exceptions:

(i) Except for RCN's initial [REDACTED] capital contribution RCN shall not be required to make any capital contributions to LIVE. As the business of LIVE is currently contemplated, the members do not contemplate the need for additional capital contributions by the members. If the LIVE members unanimously agree to changes in the nature of LIVE's business that will increase LIVE's capital requirements, the parties will agree as to appropriate dilution and preemption rights.

(ii) MFS Communications Company, Inc. shall not have any right to purchase any equity interest in LIVE:

(iii) Existing LIVE shall not be required to make any loans to RCN in respect of any portion of any capital call; and

(iv) Existing LIVE shall not have any right to buy RCN's interest independent of RCN Buyout of the Milstein Member's membership interest in Freedom and LIVE's right of first refusal.

The undersigned hereby agrees that to the extent RCN and the undersigned have not entered into the LIVE Operating Agreement on the Closing Date, the undersigned will (i) implement the business arrangements contemplated by the Transaction Documents; (ii) pay to RCN Corporation all amounts necessary to put RCN Corporation in the same economic position as RCN Corporation would have been in had